

1309

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS, AAO, 20 Mass, 3/F

Washington, D.C. 20536

FILE: [REDACTED]
EAC 02 112 52226

Office: Vermont Service Center

Date: **AUG 28 2003**

IN RE: Petitioner:
Beneficiary:

[REDACTED]

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

[REDACTED]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director for further action.

The petitioner is a native and citizen of France who is seeking classification as a special immigrant, pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director determined that the petitioner failed to establish eligibility for the benefit sought because she was divorced from her allegedly abusive U.S. citizen spouse for more than two years prior to the filing of the self-petition. The director, therefore, denied the petition.

On appeal, counsel asserts that the director improperly denied the self-petition. He states that the petitioner filed her I-360 petition on March 8, 1999, during her marriage and that the Service denied the petition on June 18, 1999, on the sole ground that the petitioner had failed to demonstrate "extreme hardship" which would result from her removal to France. On January 18, 2000, the AAO affirmed the director's denial, again on the sole ground of absence of "extreme cruelty." Counsel further states that October 28, 2000 Congress amended the INA by abolishing the "extreme hardship" factor altogether. Since this was the sole ground upon which the petition had been denied, the petitioner filed a motion to reopen on December 20, 2001. He states that the petitioner's attorney at the time inadvertently included a new Form I-360 with the motion to reopen. Counsel asserts that the new Form I-360 was not required by INS regulations pertaining to motions to reopen, and its submission was apparently a clerical error. He further states that on October 29, 2002, the director denied the second self-petition alleging that the I-360 was filed on February 11, 2002, and was, thus, not filed during or within two years of the termination of the petitioner's marriage on May 18, 1999.

8 C.F.R. § 204.2(c)(1) states, in pertinent part, that:

(i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

8 C.F.R. 204.2(c)(1)(ii) states, in pertinent part:

The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended through annulment, death, or divorce before that time. After the self-petition has been properly filed, the legal termination of the marriage will have no effect on the decision made on the self-petition.

On October 28, 2000, the President approved enactment of the Violence Against Women Act (VAWA) 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1503(b) amends section 204(a)(1)(A)(iii) of the Act so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a United States citizen is no longer required to be married to the alleged abuser at the time the petition is filed as long as the petitioner can show a connection between the legal termination of the marriage within the past two years and battering or extreme cruelty by the United States citizen spouse. *Id.* section 1503(b), 114 Stat. at 1520-21.

The current petition, Form I-360, shows that the petitioner entered the United States on May 24, 1997, with an F-1 student visa. The petitioner married her United States citizen spouse on February 27, 1998 at Tempe, Arizona. The petitioner's spouse subsequently petitioned for dissolution of the marriage, and the judgment of divorce became effective on May 18, 1999. On February 11, 2002, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage.

The director determined that the petitioner failed to establish eligibility for the benefit sought because she was divorced from her U.S. citizen spouse for more than two years prior to the filing of the self-petition on February 11, 2002. He maintained that there is no provision of law whereby an alien may self-petition based on a former spousal relationship when more than two years have passed between the date of the legal termination of the marriage and the date of filing of the Form I-360 self-petition.

Although the divorce of the two parties prior to the filing of the petition is no longer a bar as long as there is a connection between the legal termination of the petitioner's marriage within the past two years and battering or extreme cruelty by her spouse, the record reflects that the petitioner and her citizen spouse were divorced on May 18, 1999, and the petitioner filed the instant petition on February 11, 2002, more than two years after the divorce was final. The director is correct in his conclusion regarding the second petition.

The record, however, also contains an I-360 self-petition filed on March 8, 1999. On June 18, 1999, the director denied the petition because the petitioner had failed to establish that her removal from the United States would result in extreme hardship to herself, or to her child. The petitioner appealed the director's decision in this case. On January 18, 2000, the AAO concurred with the findings of the director and dismissed the appeal.

Counsel asserts that the new I-360 was erroneously filed with the petitioner's motion to reopen the AAO's decision of January 18, 2000. He states that the motion to reopen was based on the October 28, 2000 VAWA amendment abolishing the "extreme hardship" factor.

At the time of the director's decision to deny the first petition, filed on March 8, 1999, 8 C.F.R. § 204.2(c)(1)(i)(G) required the petitioner to establish that her removal would result in extreme hardship to herself or to her child. On October 28, 2000, the President approved enactment of VAWA 2000. Section 1503(b) amends section 204(a)(1)(A)(iii) of the Act so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a United States citizen is no longer required to show that the self-petitioner's removal would impose extreme hardship on the self-petitioner or the self-petitioner's child. *Id.* section 1503(b), 114 Stat. at 1520-21.

Based on this new amendment, on December 20, 2001 the petitioner mailed to the Service a motion to reopen the AAO's decision of January 18, 2000. The record shows that the motion to reopen was received and filed with the Service on February 11, 2002. Accordingly, as the law no longer requires that the petitioner show that her removal from the United States would result in extreme hardship to herself, the motion will be granted. The case will be remanded to the director so that he may review the record of proceeding to determine whether all other criteria listed in 8 C.F.R. § 204.2(c)(1) are satisfied. The director shall enter a new decision which, if adverse to the petitioner, is to be certified to the AAO for review, and without fee.

ORDER: The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.